

1 GLYNN & FINLEY, LLP
CLEMENT L. GLYNN, Bar No. 57117
2 ADAM FRIEDENBERG, Bar No. 205778
JONATHAN A. ELDREDGE, Bar No. 238559
3 One Walnut Creek Center
100 Pringle Avenue, Suite 500
4 Walnut Creek, CA 94596
Telephone: (925) 210-2800
5 Facsimile: (925) 945-1975
cglynn@glynnfinley.com
6 afriedenberg@glynnfinley.com
jeldredge@glynnfinley.com

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8 Attorneys for Defendant
ConocoPhillips Company

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10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA

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13 CHARLES DAVIDSON and CD & PWS) **Case No. C 08-01756 BZ**
ENTERPRISES, INC.,) **DEFENDANT CONOCOPHILLIPS**
14) **COMPANY'S ANSWER TO**
Plaintiffs,) **PLAINTIFFS' COMPLAINT**
15)
vs.) **Judge: Hon. Bernard Zimmerman**
16)
CONOCOPHILLIPS COMPANY and DOES)
17 1 through 100,)
18 Defendants.)
19 _____)

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21 Defendant ConocoPhillips Company ("Defendant") hereby answers the Complaint
22 of Plaintiffs Charles Davidson ("Davidson") and CD & PWS Enterprises, Inc. ("CD").
23 (Davidson and CD are referred to herein collectively as "Plaintiffs.")

24 **GENERAL ALLEGATIONS**

- 25 1. Defendant is without knowledge or information sufficient to form a belief
26 as to the truth of the allegations of paragraph 1 and on that basis deny them.
- 27 2. Defendant admits the allegations of paragraph 2.
- 28 3. Defendant denies the allegations of paragraph 3.

1 4. Defendant is without knowledge or information sufficient to form a belief
2 as to the truth of the allegations of paragraph 4 and on that basis denies them.

3 5. Defendant denies the allegation of paragraph 5 that Plaintiffs purchased or
4 acquired “a gas station, convenience store and service bays for repairing automobiles.”
5 Defendant is without knowledge or information sufficient to form a belief as to the truth of the
6 allegation of paragraph 5 that “CONOCO . . . is the only oil company relevant to this case” and
7 on that basis denies this allegation. Defendant admits the other allegations of paragraph 5.

8 6. Defendant admits the allegation of paragraph 6 that “PLAINTIFFS were
9 informed of a rental reimbursement program” Defendant denies the other allegations of
10 paragraph 6.

11 7. Defendant admits the allegation of paragraph 7 that it sent a letter to
12 Plaintiffs on or about July 25, 2003. Defendant denies the allegations of paragraph 7 that “[t]here
13 was absolutely no indication in this letter that rent reimbursement was unavailable to
14 PLAINTIFFS or that PLAINTIFFS were mistaken in their understanding that they were eligible
15 for the rent reimbursement.” Defendant is without knowledge or information sufficient to form a
16 belief as to the truth of the other allegations of paragraph 7 and on that basis denies them.

17 8. Defendant is without knowledge or information sufficient to form a belief
18 as to the truth of the allegations of paragraph 8 and on that basis denies them.

19 9. Defendant is without knowledge or information sufficient to form a belief
20 as to the truth of the allegations of paragraph 9 and on that basis denies them.

21 10. Defendant is without knowledge or information sufficient to form a belief
22 as to the truth of the allegations of paragraph 10 and on that basis denies them.

23 11. Defendant admits that Greg Pellegrino met with Charles Davidson at the
24 Big Horn Steakhouse, but otherwise denies the allegation in the first sentence of paragraph 11.
25 Defendant denies the allegations of paragraph 11 that “Mr. Pellegrino attempted to characterize
26 rental reimbursement as discretionary, threatened to refuse to reimburse PLAINTIFFS and left
27 the meeting stating that he would ‘think about it.’” Defendant denies the allegation of paragraph
28 11 that Plaintiffs had never been informed of the cancellation of rent reimbursement programs.

1 Defendant admits the other allegations of paragraph 11

2 12. Defendant admits that Plaintiffs made an ethics complaint to
3 ConocoPhillips in April 2007. Defendant is without knowledge or information sufficient to form
4 a belief as to the truth of the other allegations of paragraph 12 and on that basis denies them.

5 13. Defendant is without knowledge or information sufficient to form a belief
6 as to the truth of, and on that basis denies, the allegations of paragraph 13 that the “total cost”
7 was “\$455,000,” that “PLAINTIFFS immediately contacted CONOCO. . .” and that Plaintiffs
8 “refused to sign this agreement since it left \$180,000 of the investment uncompensated.”
9 Defendant admits the other allegations of paragraph 13.

10 14. Defendant is without knowledge or information sufficient to form a belief
11 as to the truth of the allegations of paragraph 14 and on that basis denies them.

12 15. Defendant admits that CD operated another 76 station in Pleasanton,
13 California. Defendant further admits that CD failed to sell gasoline and, therefore, violated the
14 Dealer Station Lease and Motor Fuel Supply Agreement. Defendant denies the remaining
15 allegations of paragraph 15, and specifically denies that it committed or engaged in any
16 “wrongful actions.”

17 16. Defendant admits that Plaintiffs sold the Pleasanton station. Defendant
18 denies the remaining allegations of paragraph 16.

19 17. Defendant denies the allegation of paragraph that “Davidson and his wife
20 have suffered immeasurably due to CONOCO’S willful refusal to fully reimburse PLAINTIFFS
21 for their significant investment in the gas station” and specifically denies that it refused, willfully
22 or otherwise, to reimburse Plaintiffs for such investment. Defendant further denies that its acts or
23 omissions in any way caused any of the “losses” alleged by Plaintiffs. Defendant is without
24 knowledge or information sufficient to form a belief as to the truth of the other allegations of
25 paragraph 14 and on that basis denies them.

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FIRST CLAIM FOR RELIEF

(Breach of Contract)

18. Defendant incorporates and repleads paragraphs 1 through 17 above as though fully set forth herein.

19. Defendant denies the allegations of paragraph 19.

20. Defendant denies the allegations of paragraph 20.

21. Defendant denies the allegations of paragraph 21 and specifically denies that it failed and/or refused to perform any contractual obligations or that any contract as alleged by Plaintiffs existed.

22. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 22 and on that basis denies them.

23. Defendant admits that it terminated the Dealer Station Lease and Motor Fuel Supply Agreement with CD as a result of CD's breaches of that agreement. Defendant denies the other allegations of paragraph 23 and specifically denies that it refused "to abide by the contract" or that any such contract existed as alleged by Plaintiffs.

24. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 24 that "Davidson has made a concerted effort to obtain employment in order to mitigate his damages, but has been refused" and on that basis denies them. Defendant denies the other allegations of paragraph 24.

25. Defendant denies the allegations of paragraph 25 and specifically denies the allegations that it breached any obligations, or is liable, to Plaintiffs.

SECOND CLAIM FOR RELIEF

(Intentional Misrepresentation)

26. Defendant incorporates and repleads paragraphs 1 through 25 above as though fully set forth herein.

27. Defendant denies the allegations of paragraph 27.

28. Defendant denies the allegations of paragraph 28, and specifically denies that it misrepresented and/or concealed any facts.

29. Defendant denies the allegations of paragraph 29, and specifically denies that it misrepresented and/or concealed any facts.

30. Defendant denies the allegations of paragraph 30, and specifically denies that it misrepresented and/or concealed any facts.

31. Defendant denies the allegations of paragraph 31, and specifically denies that it misrepresented and/or concealed any facts.

THIRD CLAIM FOR RELIEF

(Negligent Misrepresentation)

32. Defendant incorporates and repleads paragraphs 1 through 31 above as though fully set forth herein.

33. Defendant denies the allegations of paragraph 33, and specifically denies that it misrepresented and/or concealed any facts.

34. Defendant denies the allegations of paragraph 34, and specifically denies that it misrepresented and/or concealed any facts.

35. Defendant denies the allegations of paragraph 35, and specifically denies that it misrepresented and/or concealed any facts.

FOURTH CLAIM FOR RELIEF

(Unfair Business Practices)

36. Defendant incorporates and repleads paragraphs 1 through 35 above as though fully set forth herein.

37. Paragraph 37 states a legal conclusion, to which Defendant is not required to respond.

38. Paragraph 38 states a legal conclusion, to which Defendant is not required to respond. To the extent paragraph 38 contains allegations to which Defendant is required to respond, Defendant admits it sells petroleum products to the public. Except as expressly admitted herein, Defendant denies the allegations of paragraph 38.

39. Defendant denies the allegations of paragraph 39.

40. Defendant denies the allegations of paragraph 40 and specifically denies

1 that it committed any of the acts or engaged in any of the practices alleged by Plaintiffs in
2 paragraph 40.

3 41. Defendant denies the allegations of paragraph 41.

4 42. Paragraph 42 states a legal conclusion, to which Defendant is not required
5 to respond. To the extent paragraph 42 contains allegations to which Defendant is required to
6 respond, Defendant denies that Plaintiffs are entitled to the remedies sought by Plaintiffs in
7 paragraph 42.

8 **AFFIRMATIVE DEFENSES**

9 As separate and affirmative defenses to the Complaint and each cause of action
10 asserted therein, Defendant avers as follows.

11 **FIRST AFFIRMATIVE DEFENSE**

12 **(Failure to State a Claim)**

13 The Complaint and each purported claim for relief therein fails to plead sufficient
14 facts to state a claim upon which relief can be granted.

15 **SECOND AFFIRMATIVE DEFENSE**

16 **(Standing)**

17 Defendant is informed and believes, and thereon avers, that CD and/or Davidson
18 lack standing to assert the purported claims for relief alleged in the Complaint.

19 **THIRD AFFIRMATIVE DEFENSE**

20 **(Laches)**

21 Defendant is informed and believes, and thereon avers, that Plaintiffs' claims are
22 barred by the doctrine of laches.

23 **FOURTH AFFIRMATIVE DEFENSE**

24 **(Statutes of Limitation)**

25 Defendant is informed and believes, and thereon avers, that the Complaint and
26 each purported cause of action therein is barred by applicable statutes of limitations.

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1 **FIFTH AFFIRMATIVE DEFENSE**

2 **(Waiver)**

3 Defendant is informed and believes, and thereon avers, that Plaintiffs' purported
4 claims are barred by the doctrine of waiver.

5 **SIXTH AFFIRMATIVE DEFENSE**

6 **(Estoppel)**

7 Defendant is informed and believes, and thereon avers, that Plaintiffs' purported
8 claims are barred by the doctrine of equitable estoppel.

9 **SEVENTH AFFIRMATIVE DEFENSE**

10 **(Unclean Hands)**

11 Defendant is informed and believes, and thereon avers, that Plaintiffs' purported
12 claims are barred by the doctrine of unclean hands.

13 **EIGHTH AFFIRMATIVE DEFENSE**

14 **(Failure to Mitigate)**

15 Defendant is informed and believes, and thereon avers, that Plaintiffs have failed
16 to mitigate their damages, if any.

17 **NINTH AFFIRMATIVE DEFENSE**

18 **(Contributory Fault)**

19 Defendant is informed and believes, and thereon avers, that Plaintiffs failed to
20 exercise ordinary care and prudence to avoid the injuries and damages alleged in the complaint,
21 and that said lack of care proximately caused and contributed to the injuries and damages alleged,
22 if any.

23 **TENTH AFFIRMATIVE DEFENSE**

24 **(Intervening Cause)**

25 Defendant is informed and believes, and thereon avers, that the sole cause of
26 Plaintiffs' alleged damages, if any, was the acts or omissions of Plaintiffs and/or of third parties
27 for whose acts or omissions Defendant is not legally responsible.

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ELEVENTH AFFIRMATIVE DEFENSE

(Full or Substantial Performance)

Defendant has fully or substantially performed any and all contractual obligations owed Plaintiffs.

TWELFTH AFFIRMATIVE DEFENSE

(Integration / Parol Evidence Rule)

To the extent Plaintiffs seek to make claims that vary the terms of the integrated agreements referenced in the Complaint, and any other integrated agreements existing between either Plaintiff and Defendant, any such claim is precluded by the express terms and conditions of the integrated agreements and by the parol evidence rule.

THIRTEENTH AFFIRMATIVE DEFENSE

(Statute of Frauds)

Plaintiffs' claims are barred and precluded by the statute of frauds.

FOURTEENTH AFFIRMATIVE DEFENSE

(Statutory Compliance)

Defendant has complied at all times with all applicable Federal and State statutes and regulations including, but not limited to, the Petroleum Marketing Practices Act, 15 U.S.C. § 2801, *et seq.* (the "PMPA").

FIFTEENTH AFFIRMATIVE DEFENSE

(Preemption)

The PMPA provides the exclusive remedy for claims related to the non-renewal or termination of a petroleum franchise relationship and thus preempts Plaintiffs' claims, and any state law, to the extent such claims or law are inconsistent with the PMPA.

SIXTEENTH DEFENSE

(Punitive Damages Unconstitutional)

The Complaint fails to allege facts sufficient to state a claim for exemplary or punitive damages, and an award of exemplary or punitive damages in this action would violate the United States and California constitutions.

1 **SEVENTEENTH DEFENSE**

2 **(Limitation of Remedies)**

3 Defendant is informed and believes, and thereon avers, that the dispute referenced
4 in the Complaint was subject to provisions that limited Plaintiffs' remedies, pursuant to which
5 Defendant has discharged all of its obligations to Plaintiffs, or any of them.

6 **EIGHTEENTH DEFENSE**

7 **(Unforeseeability)**

8 The damages alleged by Plaintiffs were neither foreseen by the parties at the time
9 of contracting, nor reasonably foreseeable, and hence their recovery is precluded.

10 **NINETEENTH DEFENSE**

11 **(Setoff)**

12 Plaintiffs' damages, if any, must be reduced or offset by amounts owed by
13 Plaintiffs to Defendant.

14 **RESERVATION OF AFFIRMATIVE DEFENSES**

15 Defendant reserves the right, without incurring the obligation, to assert additional
16 affirmative defenses upon discovery of the particulars of Plaintiffs' claims, which are not
17 apparent on the face of the Complaint.

18 WHEREFORE, Defendant prays for relief as follows:

19 1. That Plaintiffs take nothing by way of the Complaint, and the Complaint be
20 dismissed with prejudice;

21 2. That judgment be entered in Defendant's favor with respect to the Complaint and
22 all causes of action alleged therein;

23 3. That the Court award Defendant its costs of litigation, including expert fees and
24 reasonable attorneys' fees, to the extent permitted by contract and/or law; and

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1 4. For such other relief as the court may deem just and proper.

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3 Dated: July 23, 2008

4 GLYNN & FINLEY, LLP
5 CLEMENT L. GLYNN
6 ADAM FRIEDENBERG
7 JONATHAN A. ELDREDGE
8 One Walnut Creek Center
9 100 Pringle Avenue, Suite 500
10 Walnut Creek, CA 94596

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Attorneys for Defendant
ConocoPhillips Company